

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3089 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT PANCHAYAT

Versus

KIRITKUMAR V PARMAR

Appearance:

MR DD VYAS for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 15/10/1999

ORAL JUDGEMENT

Learned advocate Mr. Vyas is appearing for the petitioner Panchayat. The respondent workman was served with the notice of rule. However, he has not been represented by anybody.

The facts of the present case, in short, are that the respondent workman was working with the petitioner

panchayat as a peon with effect from 28th June, 1981 and that he was continued as such till 30th August, 1982. Thereafter, the services of the respondent workman were terminated by the petitioner panchayat. Said action of termination of his services was challenged by the respondent workman before the labour court by filing the Reference (LCR) No. 677 of 1983. Before the labour court, the workman has filed the statement of claim in which it was pointed out by the workman that the termination order which was passed by the petitioner panchayat is illegal, arbitrary and violative of section 25F of the Industrial Disputes Act, 1947 ("the ID Act" for short). The order of termination was also challenged on the ground that it is violative of the provisions of section 25G and 25H of the ID Act. Before the labour court, the petitioner panchayat had filed its written statement vide Exh. 3 and it was pointed out by the panchayat that the father of the respondent workman Shri Vajubhai Parmar was serving in the panchayat as labourer cum operator who died while in employment on 14.4.1981 and therefore, the panchayat had moved proposal for appointment of the workman as peon in the Government. That before the sanction is accorded by the Government, the mother of the respondent workman applied on 28th June, 1981 to give temporary employment to her son i.e. the workman herein and the said application was considered by the panchayat and appointment orders were given to the workman herein. According to the petitioner panchayat, the proposal for giving employment to the workman as aforesaid was rejected by the Government because monthly income of the family of the workman was more than Rs. 400/- and in these circumstances, the workman herein was not continued in service and was discharged from service. The panchayat had further raised contention before the labour court that it was a fixed term appointment of 29 days' period on temporary basis and the workman was not an industrial workman and, therefore, his service was governed by the provisions of the Bombay Civil Services Rules and the provisions of the Industrial Disputes Act, 1947 were not applicable to the panchayat and the respondent workman has also alternative remedy of appeal before the Gujarat State Civil Service Tribunal and, therefore, the reference should be rejected.

Before the labour court, the respondent has produced twelve letters of appointment vide Exh. 14 to 18 and his service was terminated on 30.8.1982. Before the labour court, the workman was examined vide Exh. 38 and he had deposed before the labour court that from 28th June, 1981 to 30th August, 1982, he was continued in

service and that he has completed 240 days' continuous service and that his service was terminated by the petitioner panchayat without following the provisions of section 25F of the ID Act. Before the labour court, he has also deposed that he was unemployed during the intervening period. As against this, the panchayat has not led any oral evidence in support of the contentions which were raised by it in its written statement before the labour court. In paragraph 10 of the impugned award, the labour court has considered that while terminating the services of the respondent workman, the petitioner panchayat has violated the provisions of Sec. 25F of the ID Act. The labour court has also considered the contention raised by the panchayat in paragraph 12 of the written statement that there is no question of recruitment through selection process and it was not a case of the panchayat that the workman was called for interview and that he was not selected by the panel of the selection committee.

The labour court, after considering the evidence on record, the labour court has directed the petitioner panchayat to reinstate the respondent workman in service by passing the award dated 1st August, 1989. As regards back wages, in paragraph 14 of the impugned award, the labour court has observed that the workman is sufficiently earning and, therefore, the labour court has declined to grant any back wages. Feeling aggrieved and dissatisfied by the said award passed by the labour court, the petitioner panchayat has approached this Court by filing this petition.

This Court, while admitting the petition, has granted interim relief subject to compliance of the provisions of section 17B of the Industrial Disputes Act, 1947.

Mr. Vyas, the learned advocate appearing for the petitioner panchayat has raised the contention that the panchayat is not an 'industry' and the reference is bad in law and the respondent was a Government employee and, therefore, the labour court has passed the award without jurisdiction. The contention raised by Mr. Vyas, the learned advocate for the panchayat cannot be sustained in view of the decision of this Court in case of Dabhoi Nagarpalika versus Omkar Somabhai Patel reported in 1999 (1) GLH 678. In case of Dabhoi Nagarpalika, this Court was considering the very same contention and has come to the conclusion that it is not the case that the incumbents were employed by the petitioner for the activities which can be considered to be in discharge of

sovereign function of the State. It has been held that it cannot be argued that all the department of the State are immuned from the provisions of the ID Act as it stand today. The other contention that the services of the respondent workman are governed by the provisions of the Bombay Civil Services Rules is also not well founded in view of the statutory mandate under section 25J of the ID Act.

In the said decision, view was taken by this Court that the panchayat is covered by the definition of section 2(j) of the ID Act. No other contention was raised by Mr. Vyas. It is not in dispute that the workman has completed 240 days' continuous service and at the time of termination of his services, the provisions of section 25F were not followed by the petitioner panchayat. Therefore, the impugned award passed by the labour court in directing the petitioner panchayat to reinstate the respondent workman in service to his original post with continuity of service but without back wages cannot be considered to be unreasonable, illegal or without jurisdiction. No infirmity has been pointed out by the learned advocate for the petitioner panchayat requiring interference of this Court while exercising the powers under Article 226/227 of the Constitution of India. Therefore, the present petition is liable to be dismissed.

In view of the above discussion, this petition fails and the same is dismissed. Rule is discharged. Ad-interim relief granted earlier shall stand vacated. There shall be no order as to costs.

This petition was admitted and ad interim relief against the implementation and execution of the impugned award was granted by this Court on 19th June, 1991 and more than nine years have passed by now. Therefore, since I am rejecting this petition, the petitioner panchayat is required to reinstate the respondent workman in service with full back wages from the date of the impugned award till the date of his actual reinstatement on his original post with continuity of service. Therefore, in the larger interest of justice, I am directing the petitioner panchayat to implement and execute the impugned award of the labour court by reinstating the respondent workman to his original post with continuity of service and to pay to the respondent workman full back wages for the period from the date of the impugned award i.e. 1st August, 1989 till the date of his actual reinstatement in service on his original post. The petitioner panchayat shall reinstate the

respondent workman in service within one month from the date of receipt of certified copy of this judgment and will pay him back wages for the period as aforesaid within three months from the date of receipt of certified copy of this judgment.

In view of the interim order passed by this Court while admitting the present petition, it is clarified that it will be open for the petitioner panchayat to adjust and deduct the amount which it has paid to the respondent workman in compliance of section 17B of the Industrial Disputes Act.

15.10.1999. (H.K.Rathod,J.)

Vyas